

EDU #4318-95S and #225-96S (consolidated)
C # 509-96
SB # 94-96

IN THE MATTER OF THE TENURE :
HEARING OF JOHN HOVINGTON, : STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
CITY OF CAMDEN, CAMDEN COUNTY. :

Decided by the Commissioner of Education, November 18, 1996

For the Petitioner-Respondent, Murray, Murray & Corrigan (Karen A. Murray,
Esq., of Counsel)

For the Respondent-Appellant, Zarrillo & Sappacosta (Anthony J. Zarrillo, Jr.,
Esq., of Counsel)

John Hovington (hereinafter "respondent"), a tenured teaching staff member, has filed an appeal to the State Board from a decision of the Commissioner of Education dismissing him from his tenured employment with the Board of Education of the City of Camden (hereinafter "Board") for unbecoming conduct. Respondent contends that the Commissioner erred in determining that his exceptions to the initial decision had not been filed in a timely manner, and also in failing to consider his claims for indemnification and back pay. Respondent reserved argument on the merits of the tenure charges until the Commissioner properly considered his exceptions.

The Board has filed a motion to strike those portions of respondent's appeal brief in which he claims entitlement to indemnification and back pay, arguing that such issues were not considered during the proceedings below.

After a careful review of the record, we remand this matter to the Commissioner for further proceedings consistent with our decision herein.

We find initially that respondent's exceptions to the initial decision were filed with the Commissioner in a timely manner. A delivery receipt from the filing service utilized by respondent clearly indicates that his exceptions were accepted by a mailroom representative of the Department of Education at 3:50 p.m. on October 21, contrary to the Commissioner's assertion that the exceptions were not received until October 22. Given such information, we grant respondent's request to set aside the Commissioner's decision on the merits of the tenure charges and to remand this matter to the Commissioner for consideration of respondent's exceptions in determining those charges.

The record further indicates that respondent had filed a Complaint in Lieu of Prerogative Writ in Superior Court, Law Division in August 1995, in which he sought indemnification and back pay from the Board. On December 19, 1995, the Appellate Division entered an order summarily transferring that case to the Commissioner. Despite such order, however, there is no indication in the record that the Commissioner took any action to determine the issues raised in that Complaint or to transmit it to the Office of Administrative Law as a contested case.¹ In that respondent's claims to

¹ We note that respondent filed a motion with the Commissioner on November 12, 1996 requesting reimbursement and back pay. The Acting Commissioner responded by indicating that the motion was filed too late during the course of these proceedings and that respondent would have to file a separate

indemnification and back pay were not litigated below, we are also compelled to remand this matter to the Commissioner for further proceedings and a final determination on those particular claims.

In summary, we remand this matter to the Commissioner for consideration of respondent's exceptions in determining the merits of the tenure charges certified against him, and for further proceedings and a final determination on respondent's claims to indemnification and back pay. In view of our decision to remand this matter, we find it unnecessary to address the Board's motion to strike those sections of respondent's appeal brief raising the indemnification and back pay claims.

We do not retain jurisdiction.

April 2, 1997

Date of mailing _____

petition of appeal raising such claims. However, given the Court's order of December 19, 1995 transferring the Complaint in Lieu of Prerogative Writ to the Commissioner, the Commissioner should have acted on the claims contained therein without the necessity of respondent filing another petition.